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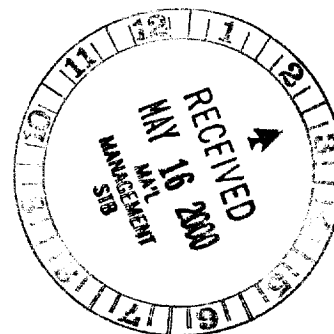
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May 16, 2000

BY HAND

Honorable Vernon A. Williams
Surface Transportation Board
Office of the Secretary
Case Control Unit
Attn: STB Ex Parte No. 582
1925 K Street, N.W.
Washington D.C. 20423-0001



Re: Public Views on Major Rail Consolidations, STB Ex Parte No. 582

Dear Secretary Williams:

On behalf of our clients, Montana Rail Link, LLC ("MRL"), I&M Rail Link, LLC ("IMRL"), and Southern Railway of British Columbia ("SRY") we hereby submit to the Surface Transportation Board, MRL, IMRL and SRY's written comments in the above-referenced proceeding. Enclosed are 10 copies of this filing and a 3.5-inch disk formatted in Word Perfect.

Please acknowledge receipt of this letter by date-stamping the enclosed acknowledgment copy and returning it to our messenger.

Very truly yours,

Jo A. DeRoche

cc: J. Fred Simpson (by facsimile)

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Public Record
5031

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Ex Parte No. 582 - *sub 1*

PUBLIC VIEWS ON MAJOR RAIL CONSOLIDATIONS

**COMMENTS OF MONTANA RAIL LINK, INC.,
I&M RAIL LINK, LLC
AND
SOUTHERN RAILWAY OF BRITISH COLUMBIA**



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Dated: May 16, 2000

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Ex Parte No. 582

PUBLIC VIEWS ON MAJOR RAIL CONSOLIDATIONS

**COMMENTS OF MONTANA RAIL LINK, INC.,
I&M RAIL LINK, LLC
AND
SOUTHERN RAILWAY OF BRITISH COLUMBIA**

Pursuant to the Advance Notice of Proposed Rulemaking in STB Ex Parte No. 582 (Sub-No. 1), served March 31, 2000 (the "ANPR"), Montana Rail Link, Inc. ("MRL"), I&M Rail Link, LLC ("I&M")¹ and Southern Railway of British Columbia ("SRY")² (together, the "Companies") submit these comments in connection with the planned revision by the Surface Transportation Board (the "Board") of the major rail consolidation procedures set forth at 49 C.F.R. Part 1180, subpart A (the "Merger Procedures"). MRL and I&M are class II carriers located, respectively, in Montana, Washington and Idaho, on the one hand, and in Iowa, Illinois, Minnesota, Missouri, Wisconsin and Kansas, on the other. SRY is located in British Columbia, Canada. Each of the Companies is controlled directly or indirectly by Dennis Washington.

MRL, I&M and SRY are significant regional railroads. MRL is a high density, primarily overhead carrier, that handles approximately 200,000 carloads of traffic per year. I&M's traffic consists of a mix of overhead and originating/terminating moves in volumes that approach 285,000 carloads annually. SRY, which is a Canadian railroad that interchanges with UP, CN and BNSF, handles approximately 50,000 carloads per year, most of which are originating or terminating. MRL acquired its properties from BNSF in 1987; SRY acquired its properties from

¹ MRL and I&M filed Written Statement of MRL and I&M, dated February 29, 2000, in these proceedings.

Itel Corporation in 1994; and I&M acquired its properties from Soo Line Railroad Company in 1997. Each of the Companies is operated as a separate and independent entity.

As set forth below, the Companies urge that the Board revise the Merger Procedures so that (i) merger applicants are required in their applications to identify the effect that a proposed merger will have on class II and class III carrier connections of the applicants, (ii) merger applicants are required to identify “paper barriers” they have in place with connecting class II and class III carriers, and (iii) merger applicants identify the steps they will take, if any, to ensure that service levels to and competitive rates for customers served by class II and class III connections do not suffer as a result of the merger.

I. INTRODUCTION

Like the traffic of other short line and regional railroads, the vast majority of the traffic handled by the Companies is interchanged with a class I connection. Stated another way, the Companies handle an insignificant volume of traffic that consists of local, “single line” moves (*i.e.*, moves that both originate and terminate on the lines of one of the Companies)³. In addition, none of the Companies interchange meaningful volumes of traffic with short line or regional railroad connections. For MRL and I&M, as well as other small railroads that were created since passage of the Staggers Act in 1980, this dependence on interline moves in conjunction with a class I connection reflects the fact that these railroads were once part of, and were acquired from, a class I carrier. The “seam” in what was formerly “seamless service” was created when the sale occurred. The traffic flows for MRL and I&M, as well as for similarly situated carriers, generally replicate the traffic flows that existed before the railroads were spun-off by the class I

² SRY filed Comments of SRY, dated February 29, 2000, in these proceedings.

³ In 1999, MRL handled approximately 16,000 local carloads, I&M handled 28,000 and SRY handled less than 1,000.

carrier. As a result, the small railroads interchange a significant amount of traffic with the class I railroad from which their respective rail properties were purchased.

This pattern of dependence by small railroads on their class I connections is underscored by the fact that class I railroads very often built into their spin-off transactions contractual provisions that prohibit or make it economically infeasible for the newly formed railroads to handle interline moves in conjunction with one or more connecting carriers. These so-called “paper barriers” effectively ensure that the interline traffic will continue to flow over the class I as it did historically, albeit on an interline basis.

In some cases, the economic future of a small railroad is even more closely tied to its class I connection by virtue of a marketing agreement, which gives the class I carrier the exclusive right to market and price traffic that will be handled on an interline basis between the class I and the small railroad. Under these arrangements, the parties agree upon the per carload allowance that the small railroad will receive for each carload of interline traffic handled. However, the small railroad has no power whatsoever to influence the prices and/or service terms quoted by the class I’s marketing department to customers for the interline moves. The underlying assumption when these marketing agreements are entered into is that the class I, in its own self-interest, will try to build traffic volumes to the mutual benefit of both parties. However, should the class I lose interest in the traffic handled with the small railroad – because it is focusing its attention on single-line service opportunities or otherwise – the small railroad typically does not have the right to step in and market the traffic. The combination of marketing agreements and paper barriers very often puts the fate of small railroads and their shippers squarely in the hands of a class I carrier.

II. MERGER EFFICIENCIES CAN HAVE CONCOMMITANT ADVERSE EFFECTS ON SMALL RAILROADS AND THEIR CUSTOMERS

As class I's merge, the applicants typically extol the virtues of single-line, seamless service. The applicants claim that, by extending long-hauls and the opportunities to provide single-line service, efficiencies can be achieved in several ways. Costly interchanges in congested terminal areas can be avoided. Longer hauls permit equipment managers to optimize use of locomotives and rail cars. Crew districts can be renegotiated to maximize deployment of personnel. And perhaps most importantly, cost structures can be improved as the merged carriers are able to move longer trains over greater distances.

The efficiencies to be achieved by single-line service, whether real or imagined, provide incentives to the merged carrier to deploy capital, personnel, equipment and energy in a manner calculated to increase opportunity for single-line moves and the longest haul. The corollary to this is that the commitment of capital, personnel, equipment and energy to inter-line moves and short-haul moves is reduced.

The stated goal of merged carriers to maximize single-line and long-haul moves is likely in most cases to have an adverse effect on small railroads and their customers for several reasons. *First*, virtually all of the traffic to and from a small railroad is handled on an interline basis with a class I. As resources are moved to single-line opportunities and away from interline opportunities, the interline service will suffer. Equipment availability will decline, frequency of service will decline and the vigor of marketing efforts will decline. As the density of interline traffic declines, the traffic death spiral begins, with the class I becoming increasingly unwilling to deploy resources to what begins to be viewed as marginal, low density traffic. As service suffers, customers seek alternative means of moving their products.

Second, as carriers merge, there is a tendency for the merged entity to close certain gateways in order to force traffic away from other railroads and onto the merged carrier's system. A three-carrier move (short line/connecting class I/remote class I) over an efficient routing may be eliminated when the merged carrier closes the gateway to the remote class I in order to favor a less efficient but longer haul "seamless" route over the merged carrier. Alternatively, where a short line participates in a move via a specific gateway with a class I that subsequently merges with another class I that serves that gateway, the short line will be unable to get a competitive rate in which it is able to participate. Although, in aggregate, this approach may be beneficial to the merged carrier, it can be catastrophic to a small railroad that depends on that gateway in order to be competitive for an important customer.

Finally, the emphasis on long-haul, single block traffic will have a self-fulfilling tendency to undermine interline traffic handled between short lines and merging class Is. Most short lines do not have a traffic base that consists primarily of unit trains, because class I's tended not to spin-off properties with extensive unit train customers. Instead, short lines must build trains with the traffic of multiple customers, which requires considerably more handling (and resulting inefficiency) than unit trains. Class I's will increasingly be willing to forego this traffic in the name of efficiency.

As the foregoing indicates, the "efficiencies" that can be achieved by creating mega-railroads come with a considerable cost. That cost is incurred by third parties (small railroads, shippers located on branch lines, shippers of carload traffic, and communities) as the merged entities deploy limited resources in a manner that favors high contribution traffic (*e.g.* single-line, long-haul unit trains) over carload traffic that is gathered by connecting small railroads. The shippers, communities and small railroads that fall outside the target traffic profile pay the

price through declining service, unavailability of equipment and in the worst case pricing initiatives by class I marketing departments that effectively de-market the traffic. The national rail network is weakened as a result.

The Companies believe that the third party costs of achieving efficiencies must be considered by the Board in considering merger applications and offset against any claimed public benefit based on seamless service. Accordingly, the Company proposes the amendments to the Merger Procedures described in Section III below.

III. PROPOSED AMENDMENTS TO THE MERGER PROCEDURES

The Companies urge that the Board revise the Merger Procedures as set forth below to ensure that the effect of future mergers on the markets served by class II and class III carriers can be meaningfully evaluated. In addition, the Companies urge that the Board adopt the amendments to the Merger Procedures set forth in the Comments of the American Short Line and Regional Railroad Association (“ASLRRA”), dated May 16, 2000, which has been filed in this proceeding. The Companies’ specific proposals are as follows:

In the Supporting Information section of the Merger Procedures, there should be added a new § 1180.6(a)(2)(vii), as follows:

The effect of the proposed transaction upon each Class II and Class III carrier that connects to any of the applicants, including (A) projected volumes of interline traffic to be handled with such connecting carrier for a three-year period following the proposed transaction, as compared to the 12-month period immediately preceding the filing of the application, (B) projected volumes of rail cars to be supplied to such connecting carrier for a three-year period following the proposed transaction, as compared to the 12-month period immediately preceding the filing of the application, and (C) projected reroutings of traffic interlined with such connecting carrier.

In the Supporting Information section of the Merger Procedures, there should be added a new § 1180.6(a)(9), as follows:

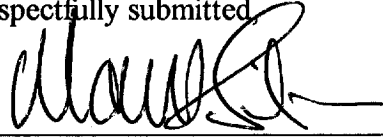
Identify all contractual arrangements between any of the applicants and a Class II or Class III carrier that (i) prohibit or inhibit the Class II or Class III carrier from interchanging traffic with one or more carriers that connect to the Class II or Class III carrier as a result of the imposition of fees or other payments, reduction of allowances, or otherwise, or (ii) grant to one or more of the applicants the right to market traffic to, from or over a connecting Class II or Class III carrier.

The Companies believe that the inclusion in merger applications of the information identified above will assist the Board in determining whether a consolidation will adversely affect the public interest by causing rail service to be curtailed or eliminated in markets served by connecting class II and class III carriers. It will also identify paper barriers and other contractual arrangements that inhibit the ability of a class II or class III carrier from providing efficient service in the markets they serve.

IV. CONCLUSION

For the reasons stated, the Companies request that the Board adopt their proposed changes to the Board's Merger Procedures and those proposed by ASLRRA.

Respectfully submitted,



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Dated: May 16, 2000

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CERTIFICATE OF SERVICE

I certify that on May 16, 2000, a copy of the foregoing Comments of Montana Rail Link, Inc., I&M Rail Link, LLC and Southern Railway of British Columbia was served by first-class mail, postage prepaid on all Parties of Record, as identified in the decision of the Surface Transportation Board, served April 28, 2000, in STB Ex Parte No. 582 (Sub-No. 1) Major Rail Consolidation Procedures.

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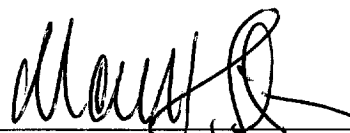
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